

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DEBRA JENE PATEL-JULSON,

Plaintiff,

vs.

PAUL SMITH, LTD.,

Defendant.

Case No. 2:12-cv-01023-MMD-CWH

ORDER

This matter is before the Court on Plaintiff's Application to Proceed in Forma Pauperis (#1), filed on June 15, 2011.

BACKGROUND

It appears that Plaintiff is attempting to allege that Defendant discriminated against her based on her gender and her race during the course of her employment.

DISCUSSION

I. Application to Proceed In Forma Pauperis

Plaintiff has attached a financial affidavit to her application and complaint as required by 28 U.S.C. § 1915(a). Reviewing Plaintiff's financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that she is unable to pre-pay the filing fee. As a result, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a Defendant/Third Party Plaintiff who is

1 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be
2 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a
3 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to
4 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be
5 dismissed as frivolous if it is premised on a nonexistent legal interest or delusional factual
6 scenario. *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual
7 frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly
8 incredible, whether or not there are judicially noticeable facts available to contradict them.”
9 *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under §
10 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing
11 its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be
12 cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
14 complaint for failure to state a claim upon which relief can be granted. Review under Rule
15 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of*
16 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and
17 plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2);
18 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require
19 detailed factual allegations, it demands “more than labels and conclusions” or a “formulaic
20 recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
21 (*citing Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled
22 factual allegations contained in the complaint, but the same requirement does not apply to legal
23 conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the elements of a cause of action,
24 supported only by conclusory allegations, do not suffice. *Id.* at 678. Secondly, where the claims
25 in the complaint have not crossed the line from plausible to conceivable, the complaint should be
26 dismissed. *Twombly*, 550 U.S. at 570.

27 **A. Federal Question Jurisdiction**

28 As a general matter, federal courts are courts of limited jurisdiction and possess only that

1 power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004).
2 Pursuant to 28 U.S.C. § 1331, federal district courts have original jurisdiction over “all civil
3 actions arising under the Constitution, laws, or treaties of the United States.” “A case ‘arises
4 under’ federal law either where federal law creates the cause of action or ‘where the vindication
5 of a right under state law necessarily turn[s] on some construction of federal law.’” *Republican
6 Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (quoting *Franchise Tax Bd.
7 v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8-9 (1983)). The presence or absence of
8 federal-question jurisdiction is governed by the “well-pleaded complaint rule.” *Caterpillar, Inc.
9 v. Williams*, 482 U.S. 386, 392 (1987). Under the well-pleaded complaint rule, “federal
10 jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly
11 pleaded complaint.” *Id.* Here, it appears Plaintiff is attempting to state a claim for discrimination
12 under Title VII of the Civil Rights Act. *See* 42 U.S.C. § 2000e et seq. Thus, there is federal-
13 question jurisdiction pursuant to 28 U.S.C. § 1331.

14 **B. Diversity Jurisdiction**

15 Pursuant to 28 U.S.C. § 1332, federal district courts have original jurisdiction over civil
16 actions in diversity cases “where the matter in controversy exceeds the sum or value of \$75,000”
17 and where the matter is between “citizens of different states.” According to Plaintiff’s complaint
18 she is a citizen of Nevada. Plaintiff has not alleged the citizenship of the party whom she seeks
19 to sue. Therefore, the Court finds that Plaintiff has not invoked the court’s diversity jurisdiction
20 pursuant to 28 U.S.C. § 1332.

21 **C. Complaint**

22 Because Plaintiff’s alleged claim falls under Title VII, the Court now screens the
23 complaint. Title VII allows individuals to sue an employer for discrimination on the basis of
24 race, color, religion, gender or national origin if he or she has exhausted both state and EEOC
25 administrative procedures. Once a plaintiff files charges with the EEOC, the commission will
26 investigate the charges, attempt to reach a settlement, and decide whether to sue the employer or
27 refer the decision to sue to the Attorney General if the charges are against a state or local
28 governmental entity. *Id.* If the EEOC or Attorney General decides not to sue and if there is no

1 settlement that is satisfactory to plaintiff, the EEOC will issue plaintiff a right-to-sue letter and
2 plaintiff will have exhausted his remedies with the EEOC. *See* 42 U.S.C. § 2000e-5(f)(1). After
3 receipt of the right-to-sue letter, plaintiff may sue in federal or state court. *Id.*; *see also Yellow*
4 *Freight Sys., Inc. v. Donenelly*, 494 U.S. 820, 825-26, 110 S.Ct. 1566, 108 L.Ed.2d 834 (1990).
5 Here, Plaintiff has attached a right-to-sue letter from the EEOC and filed this action within 90
6 days of its receipt. Thus, it appears Plaintiff has exhausted her administrative remedies.
7 Unfortunately, Plaintiff has not alleged any facts or provided supporting details in her complaint
8 and, therefore, the complaint must be dismissed.

9 **1. Gender Discrimination**

10 It appears Plaintiff seeks to allege gender and race discrimination. In order to prove a
11 prima facie case of discrimination in violation of Title VII, Plaintiff must establish: (a) she
12 belonged to a protected class; (b) she was qualified for the position; (c) she was subject to an
13 adverse employment action; and (d) similarly situated employees not in her protected class
14 received more favorable treatment. *Moran v. Selig*, 447 F.3d 748, 753 (9th Cir. 2006) (citing
15 *Kang v. U. Lim Am., Inc.*, 296 F.3d 810, 818 (9th Cir.2002)). Plaintiff may also provide direct
16 evidence of the discrimination. *See Vasquez v. County of Los Angeles*, 349 F.3d 634, 641 (9th
17 Cir. 2003). Here, Plaintiff has not identified any facts to support her claim. She simply alleges
18 that she was treated different from other while working for Defendant. While Plaintiff is not
19 required to allege specific facts supporting each element of the *prima facie* case, she must
20 include facts that indicate a plausible claim for gender discrimination. *See Twombly*, 550 U.S. at
21 545.

22 **2. Race Discrimination**

23 Plaintiff's race discrimination claim also fails because Plaintiff has not provided any
24 supporting factual information in her complaint. Before the Court can properly screen this
25 complaint, Plaintiff must provide a short and plain statement of the claim showing that she is
26 entitled to relief. Fed.R.Civ.P. 8(a)(2); *Twombly*, 550 U.S. at 555. The complaint must move
27 beyond "labels and conclusions" or a "formulaic recitation of the elements of a cause of action,"
28 it must provide sufficient factual detail to show a plausible claim. The vague allegations and

1 lack of supporting details are insufficient for the Court's evaluation of the merits of Plaintiff's
2 discrimination claim and the claim will be dismissed. Nevertheless, Plaintiff will be given leave
3 to amend her complaint in accordance with the above discussion, if she is able to do so.

4 Based on the foregoing and good cause appearing therefore,

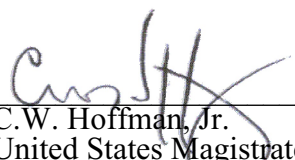
5 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed In Forma Pauperis
6 (#1) is **granted**. Plaintiff shall not be required to pre-pay the full filing fee of three hundred fifty
7 dollars (\$350.00).

8 **IT IS FURTHER ORDERED** that the movant herein is permitted to maintain this
9 action to conclusion without the necessity of prepayment of any additional fees or costs or the
10 giving of security therefor. This Order granting leave to proceed *in forma pauperis* shall not
11 extend to the issuance of subpoenas at government expense.

12 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the Complaint
13 (#1-1).

14 **IT IS FURTHER ORDERED** that the Complaint is **dismissed** without prejudice for
15 failure to state a claim upon which relief can be granted, with leave to amend. Plaintiff will have
16 **thirty (30)** days from the date that this Order is entered to file her Amended Complaint, if she
17 believes she can correct the noted deficiencies. Failure to comply with this Order may result in
18 the Court recommending that this action be dismissed.

19 DATED this 3rd day of October, 2012.

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22 C.W. Hoffman, Jr.
23 United States Magistrate Judge
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